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In re Application of:  
IEHISA, Nobuaki, et al. :  
U.S. Application No.: 08/973,424 : DECISION ON PETITION  
PCT No.: PCT/JP97/01195 :  
International Filing Date: 08 April 1997 :  
Priority Date: 08 April 1996 :  
Attorney's Docket No.: 392.1530/JDH :  
For: SLAB LASER OSCILLATOR :  
:

This decision is issued in response to applicants' "Petition Requesting U.S. PTO To Locate File And Issue Filing Receipt" filed 11 August 2003, treated herein as a petition under 37 CFR 1.181 to confirm the filing of materials initiating this national stage application on 08 December 1997. No petition fee is required.

### BACKGROUND

On 08 April 1997, applicant filed international application PCT/JP97/01195 which claimed a priority date of 08 April 1996 and which designated the United States. On 16 October 1997, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB"). The deadline for payment of the basic national fee was twenty months from the priority date, i.e., 08 December 1997.

In the present petition, applicants assert that, on 08 December 1997, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, a check in the amount of \$930 (in payment for the basic national fee), a translation of the international application into English, and a preliminary amendment. Enclosed with the petition is a copy of the materials filed 08 December 1997, and a return postcard. The postcard itemizes the materials filed and bears a USPTO receipt stamp dated 08 December 1997, as well as a stamp of serial number 08/973,424.

Applicants also assert that the following materials were filed subsequent to the 08 December 1997 filing: (1) an Information Disclosure Statement, on 31 March 1999; (2) a Status Inquiry Letter, on 13 June 2000; (3) a second Status Inquiry Letter, on 09 August 2001; (4) a third Status Inquiry Letter, on 06 November 2002; and (5) a second Information Disclosure Statement, on 18 November 2002. The present petition includes copies of these materials and stamped return postcards itemizing the materials and bearing USPTO receipt stamps.

Neither application file 08/973,424, nor any of the original materials filed by applicants with respect to this application, can be located by the USPTO at this time.

### DISCUSSION

Based on applicants' statements in the present petition and the attached return postcards, it is concluded that the materials discussed above and attached to the present petition were filed on the dates claimed. Specifically, the materials filed to initiate the national stage application (the Form PTO-1390, the translation of the international application, the preliminary amendment, and the check in payment of the basic national fee) are considered to have been filed on 08 December 1997, prior to the expiration of twenty months from the priority date. The USPTO does not, however, have a record of receiving payment of the basic national fee in this application.<sup>1</sup> Payment of such fee on 08 December 1997 is required to avoid abandonment of this application. Accordingly, based on the authorization contained in the Form PTO-1390 filed 08 December 1997, Deposit Account No. 19-3935 will be charged the basic national fee. Based on this payment and the additional materials filed 08 December 1997, it is confirmed that applicants timely initiated this national stage application on 08 December 1997.

It is noted that the present petition is accompanied by an executed declaration in compliance with 37 CFR 1.497. Deposit Account No. 19-3935 will be charged the \$130 surcharge for filing this declaration later than twenty months after the priority date.

### CONCLUSION

Applicants' petition under 37 CFR 1.181 is **GRANTED**. The materials initiating this national stage application are treated as having been filed on 08 December 1997, prior to the expiration of twenty months from the priority date.

This application is being returned to the National Stage Processing Branch of the Office of PCT Operations for further processing in accord with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 11 August 2003.



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<sup>1</sup> While the \$930 check appears to have been received by the USPTO, no record of the USPTO receiving payment on this check is present in USPTO records, nor have applicants provided in the present petition evidence that this check was cashed by the USPTO.